necessities of the case and the impolicy of reducing any land to a state of absolute uselessness. The English courts go little, if any, beyond this point. The law in England was settled by the case of *Suffield* v. *Brown*, 4 De G., J. & S. 185, that easements are impliedly reserved only where the property cannot be enjoyed without such reservation. The Supreme Court of Maine, where this rule has been followed, recently has had to apply it to an unusual state of facts before them in *Hildreth* v. *Googins*, 39 Atl. Rep. 550. The owner of a lot, bounded on one side by a highway and on the other by the ocean, sold that half of the estate which adjoined the highway without expressly reserving a way across it from the highway to the part he retained. No access could be had to the unsold portion except by the ocean or by crossing land of other owners. The Court said that implied reservations were not to be favored except in cases of strict necessity, that the ocean was a public highway, and as all communication was not shown to be cut off, the grantor must in future rely on such access as the sea afforded. This decision is within the letter of the rule. But the difficulties which a farmer would have to surmount in utilizing this road would generally prevent any but the most primitive use of the land; and it seems that the court might well have refused to consider the sea as a way in the sense that a way is necessary to the farmer.

The English doctrine strictly enforced appears often to reach harsh results; and many American courts have recognized the need of a more flexible rule. The Supreme Court of Maryland in *Burns et al.* v. *Gallagher et al.*, 62 Md. 462, laid down a test that has much to commend it; namely, that the principles of implied reservation may be invoked when the necessity is so strict that it would be unreasonable to suppose the parties intended the easement in question should not be used. This test, which would satisfactorily dispose of the case under discussion, is easy of application, fair to both parties, and well suited to the needs of this country.

CITIZENSHIP OF CHILDREN OF ALIEN PARENTS. — The final word upon this phase of our law of citizenship seems to be said in the case of *United States* v. *Wong Kin Ark*, now in advance sheets. The Supreme Court of the United States, speaking by Mr. Justice Gray, held that one born of Chinese parents domiciled in California was a citizen, and could not be excluded from the United States, although he had twice returned to China. The Chief Justice and Mr. Justice Harlan entered a vigorous dissent. The case is of first impression in the Supreme Court; although the same opinion has been previously intimated. The decision follows a series of well-considered adjudications in the Circuit Court, where the law has long been regarded as settled by Mr. Justice Field in the case of *In re Look Ting Sing*, 21 Fed. Rep. 905. The dictum to the contrary of Mr. Justice Miller in the *Slaughter House Cases*, 16 Wall. 73, must now be regarded as definitively overruled.

Citizenship is a question not of international but of municipal law. The division of the law of citizenship into the *jus sanguinis* and the *jus soli* is a deduction from the division of the jurisdiction of a State into the personal and the territorial. In the civil law, citizenship is by descent. At common law, all those born within the kingdom or legeance of the crown were held subjects; and if the United States have a common law

this ancient rule governs. *Calvin's Case*, 7 Rep. 1. Whatever abstract rules there may be, the right of every sovereignty to determine for itself by its own laws who are its citizens is a fundamental one. By the Fourteenth Amendment of the United States Constitution "all persons born or naturalized within the United States are citizens;" the exception is that those not born "subject to jurisdiction thereof" are not citizens. Are the children of aliens within the exception? When within our territory, the sovereigns, diplomats, sailors upon ships of war, and soldiers in the organized military forces of a foreign State, are not subject to our jurisdiction. Children born of parents under these circumstances of extra-territoriality would not be citizens. The same is true of the children of tribal Indians. The logic of these exceptions of sovereignty, however, does not apply to the alien subject domiciled in the United States. He is subject to the territorial jurisdiction; his children are born subject to our jurisdiction; and these, by our municipal law, are citizens. Accordingly, the decision reached by the Supreme Court seems to have every sanction of authority, policy, and theory.

The case further presents a phase of the conflict of laws not often considered. The objection to the doctrine of the majority opinion has been taken by very high authorities, that as our law provides no right of election by or for a child, as do the continental codes, a dual allegiance will result, and this is urged to be contrary to the theory of citizenship. This difficulty, however, is apparent rather than real. When a child is born in America of Chinese parents, China claims him by the *jus sanguinis*, America by the *jus soli*. It is not a question whether he is an American or a Chinaman; he is both. The municipal laws being thus in conflict, his citizenship at any time will depend upon whether he is subject to the jurisdiction of the one or of the other country. The duality of citizenship is a fact only in a third country. In China he is a Chinaman; in America, an American.

ESTOPPEL IN CRIMINAL LAW. — Whether the doctrine of estoppel has any place in criminal law, and if so, what principles govern its application, are questions that have seldom, till of late years, come up for legal discussion. The doctrine has been applied in some jurisdictions in cases of embezzlement under statute, and the decisions have been founded principally on the grounds put forward in Bishop on Criminal Law, Vol. II. ch. 16, § 364. (See, for example, *State* v. *Spaulding*, 24 Kan. 1.) Relying on such eminent authority, a dissenting judge in a recent Nebraska case maintained that the defendant should be estopped to set up a defence to the crime imputed to him. *Moore* v. *State*, 74 N. W. Rep. 319 (Neb.). The defendant, who was auditor of public accounts in the State, was indicted for embezzling some of the State's funds. The statute under which he was indicted enacted that if any person charged with the collection, safe-keeping, or disbursement of the public money convert any part of it to his own use, he shall be deemed guilty of embezzlement. By the constitution of the State all fees which were theretofore payable to a public officer for his services were made payable in advance into the State treasury. The defendant, pretending that he was charged with the collection of fees for the State, had received such fees from insurance companies, and had not accounted for them. The majority of the court held